

authority under K.S.A. 44-551 to order payment of medical expenses that the Respondent does not consider part of a compensable claim.

"All other requests are denied.

"IT IS SO ORDERED."

Claimant requested review of that Order and contends he is entitled payment or reimbursement of all medical expense, including those expenses that the respondent contends either are not authorized or are not related to the on-the-job accident. Further, claimant contends he is entitled to an order for penalties and interest pursuant to K.S.A. 1992 Supp. 44-512a.

The issues now before the Appeals Board are:

- (1) Whether the Administrative Law Judge has the authority to order the payment of medical expenses, previously incurred, that are disputed due to questions of compensability when the issue has been appealed to the Appeals Board and review is pending.
- (2) Whether claimant is entitled to penalties and fees at this juncture of the proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is a proceeding to review the Order entered by Administrative Law Judge John D. Clark after a hearing held on October 26, 1995. The Appeals Board has jurisdiction to review this matter under K.S.A. 44-551, as amended by S.B. 59 (1995).

- (1) When an award is pending review, the administrative law judge does not have the authority to order the respondent to pay outstanding medical expense that is in dispute because of questions of compensability. K.S.A. 44-551(b)(2)(C), as amended by S.B. 59 (1995), provides:

"In any case in which the final award of an administrative law judge is appealed to the board for review under this section and in which the compensability is not an issue to be decided on review by the board, medical compensation shall be payable in accordance with the award of the administrative law judge and shall not be stayed pending such review. The employee may proceed under K.S.A. 44-534a and amendments thereto and may have a hearing in accordance with that statute to enforce the provisions of this subsection."

By negative implication, a respondent may withhold payment of previously incurred medical expense that is disputed because of compensability issues pending review by the Appeals Board. In contrast, under the provisions of K.S.A. 44-551(b)(2)(B), as amended by S.B. 59 (1995), ongoing medical treatment and compensation may not be stayed while awaiting the decision of the Appeals Board after thirty (30) days from the date arguments were presented to the Board.

The Appeals Board is aware unpaid medical expense will exist until a final decision is entered. However, the claimant is protected by K.S.A. 1992 Supp. 44-510(b) that provides:

"No action shall be filed in any court by a health care provider or other provider of services under this section for the payment of an amount for medical services or material provided under the workers compensation act and no other action to obtain or attempt to obtain or collect such payment shall be taken by a health care provider or other provider of services under this section, including employing any collection service, until after final adjudication of any claim for compensation for which an application for hearing is filed with the Director under K.S.A. 44-534 and amendments thereto."

Therefore, the Administrative Law Judge may only order paid those previously incurred medical expenses that are not disputed because of compensability issues. The question whether a medical bill is authorized or related to an on-the-job accident is a compensability issue. Claimant complains that the Administrative Law Judge erred in ordering the respondent to pay those bills it agreed were a part of the compensable claim. Because the parties did not develop the record to the point where it could be determined which medical bills were actually in dispute and which were not, the Administrative Law Judge could not enter a more definite order.

From the statements at the hearing and from claimant's brief, it appears there is a significant issue regarding the relationship of the medical expense to the various medical conditions. If the parties cannot agree which expenses are related to what conditions, then it will be an issue for the trier of fact or it will perhaps be rendered moot by the final decision rendered by the Appeals Board after the oral argument presently scheduled for February 14, 1996.

(2) Claimant has failed to prove he is entitled to penalties under K.S.A. 1992 Supp. 44-512a. First, K.S.A. 1992 Supp. 44-512a provides that the respondent has twenty (20) days from the date of service of written demand to make payment before penalties may be awarded. Claimant's demand for payment was mailed October 16, 1995 and the hearing before the Administrative Law Judge was held only ten (10) days later on October 26, 1995. Therefore, it would have been premature for the Judge to assess any penalty against the respondent.

Second, K.S.A. 1992 Supp. 44-512a requires demand for payment to set forth with particularity the items of medical compensation claimed to be unpaid and past due. The transcript from the October 26, 1995 hearing contains a copy of claimant's letter to respondent's attorney dated October 16, 1995. The letter refers to an enclosed list of unpaid expenses and medical compensation due to the claimant. However, the exhibit introduced into evidence does not include any such attachment. Without the attachment, the claimant has failed to establish compliance with K.S.A. 1992 Supp. 44-512a and his entitlement to penalties.

The Appeals Board has reviewed the exhibits contained in claimant's brief filed in this proceeding on November 13, 1995, and finds that such exhibit cannot be considered in this appeal because it was not part of the evidentiary record at the October 26, 1995 hearing before the Administrative Law Judge. K.S.A. 44-555b(a), as amended by S.B. 59

(1995), limits Appeals Board review to questions of law and fact based upon the evidence presented to the administrative law judge. Even assuming for purposes of argument that the Appeals Board could consider the exhibits attached to claimant's brief, it is questionable whether those documents satisfy the requirements of K.S.A. 1992 Supp. 44-512a because, in most instances, the nature of service or the health care provider, is not indicated with the amount of the expense being claimed. When itemizing medical compensation, one should consider providing the following information: date of service or expense, nature of service or expense, the health care provider providing the service or the provider to whom the expense is related, and the amount claimed. When someone is injured and receives treatment for several medical conditions and there is an issue whether the medical treatment is authorized or the medical condition is related to the on-the-job accident, one should consider also providing the medical condition associated with that expense. In any event, in itemizing the expenses, sufficient information must be produced in order to determine its relationship to the work-related accident.

(3) At the October 26, 1995 hearing, claimant requested fees. The Appeals Board finds the Administrative Law Judge was correct in denying that request. This hearing was neither a post-award motion for review and modification, nor a timely motion for penalties. Instead, the hearing came before the Administrative Law Judge for clarification or supplementation of the Award entered by the Judge on September 28, 1995. As indicated above, the respondent is not required to pay, pending review by the Appeals Board, those medical bills which have been previously incurred and are in dispute because of compensability issues. Because the parties have not identified the specific medical bills that are in dispute and the Administrative Law Judge did not identify them in the Award, the respondent was, in effect, requesting the Administrative Law Judge to make that determination at the October 26, 1995 hearing. This was not a post-award issue and claimant's request for attorney fees was properly denied.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the October 26, 1995 Order of Administrative Law Judge John D. Clark should be, and the same is, hereby affirmed.

IT IS SO ORDERED.

Dated this ____ day of January 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Bill H. Raymond, Wichita, Kansas

Frederick L. Haag, Wichita, Kansas
John D. Clark, Administrative Law Judge
Philip S. Harness, Director